

MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT
5:30 PM, TUESDAY, MAY 16, 2017
MEETING ROOM B, CLAY COUNTY COURTHOUSE

Members Present: Amos Baer, Perry Bushaw, Greg Anderson, Paul Krabbenhoft, Pamela Harper.

Members Absent: None.

Others Present: David Johnson, Dennis Wanzek, Jeffrey Anders, Tim Magnusson, Lynne Spaeth.

On motion by Greg Anderson, seconded by Pamela Harper, and unanimously carried, the Board approved the agenda.

On motion by Paul Krabbenhoft, seconded by Perry Bushaw, and unanimously carried, the Board approved the April 18, 2017 minutes.

DAVE & MELISSA JOHNSON - REQUEST FOR VARIANCE

The applicants are seeking approval of a variance to allow a reduction in the required setback from a structure to road right-of-way in a Shoreland District. The County Code requires a 20-foot setback from a structure to the edge of the road right-of-way. The affected property is Lot 6, Block 1, R&S Grefsrud Subdivision, Section 10, T138N, R44W (Parke Twp.) in the Shoreland-Special Protection (S-SP) zoning district.

On motion by Perry Bushaw, seconded by Greg Anderson, and unanimously carried, the Board opened the public hearing.

Tim Magnusson, Planning Director, presented photos with drawings by the applicant. He explained the County ordinance follows the DNR's shoreline regulations which stipulate structures are to be maintained at a 20-foot setback from the edge of a right-of-way. The applicant is requesting this variance because of the practical difficulties on the property. The Subdivision parcels are located at the top of a hill. The lots are large but the contour around them is steep. This is a 50% reduction in setback. Magnusson showed an aerial photo of the property and proposed building running parallel with the roadway. If they build with the 20-foot setback, there would be about a 6-foot drop from the front to back side of the building. If they build with the 10-foot setback, that is reduced to about 3 feet. There would be a retaining wall from the building to hold the soil. A photograph of the development, proposed site and retaining wall were shown as well as a contour map of the area. The road is maintained by the County Highway Department. There are two other residences along the road to the north. There could be an issue with the building catching snow but Magnusson feels that going from 20 feet to 10 feet would not make much difference. He also stated he feels there is some Practical Difficulty due to the land contour.

Dave Johnson, the applicant, was present. He stressed the fact there is a potential erosion factor either way. He apprised the Commission that along the lakeside of the structure it will be all rock. Johnson indicated where the property line was in relation to the ditch. Additionally, he does not

foresee any problems with snow accumulation. He clarified the location of the retaining wall, his driveway and a driveway turnaround. It is literally the only place he can build the structure.

On motion by Perry Bushaw, seconded by Pamela Harper, and unanimously carried, the Board closed the public hearing.

The Board did not feel there would be much difference from 20 feet to 10 feet. They did, however feel there was an erosion issue but the 10-foot setback would be the better choice. The Board felt there was a practical difficulty.

On motion by Perry Bushaw, and seconded by Paul Krabbenhoft, unanimously carried, the Board of Adjustment approved Dave and Melissa Johnson's request for variance to allow a reduction in the required setback from a structure to road right-of-way on property located in Lot 6, Block 1, R&S Grefsrud Subdivision, Section 10, T138N, R44W, Parke Township, for the following reasons:

- 1) **The property owner proposes to use the property in a reasonable manner not permitted by an official control;**
- 2) **The plight of the landowner is due to circumstances unique to the property not created by the landowner;**
- 3) **The variance will not alter the essential character of the locality.**

DENNIS WANZEK - REQUEST FOR VARIANCE

The applicant is seeking approval of a variance to allow a non-conforming structure to be removed and reconstructed only 90 feet from the center of a road. The current setback requirement is 125 feet from a road centerline. The property affected is 6.26 acres located in the SW Quarter SW Quarter, Section 13, T137N R48W (Holy Cross Twp.) in the Agricultural General (AG) zoning district.

On motion by Greg Anderson, seconded by Pamela Harper, and unanimously carried, the Board opened the public hearing.

Tim Magnusson, Planning Director, presented photos of the site. He pointed out the non-conforming building on site about 90-feet from the centerline of the road. The Applicant proposes to take down the building and erect a larger building in the same location. He displayed the applicant's drawing of the proposal. Additionally, there is a raised garden and a hockey rink in the back. Magnusson showed an aerial photo and the location of 125 feet and how it would affect the rink and garden. It does appear that the applicant could move the building further north to meet the setback but it would impact some established uses on the site. To meet a 125-foot setback the south wall of the new building would need to start at the current building's north wall.

Additionally, the Ordinance states if a non-conforming building is taken down, a new conforming building needs to be built. The non-conforming building could be remodeled but not expanded. Magnusson presented photographs provided by the applicant evidencing his proposal. If the building were pushed to the north, some trees may possibly need to be removed.

Dennis Wanzek, the applicant, was present for questions. His justification is that of convenience. If the variance was denied, he would have to move some trees, gardens, etc. He explained that the wood around the garden would act as a wall for the ice rink. He floods the rink in the winter for his children to use. The non-conforming stick building with wood siding was built in 1952. Wanzek stated the new building would be a pole building approximately 14-feet high.

Magnusson cited State legislation regarding non-conforming buildings destroyed by nature and additional stipulations.

On motion by Greg Anderson, seconded by Perry Bushaw, and unanimously carried, the Board closed the public hearing.

Discussion began regarding the building and landscaping by applicant, pursuant to the placement of the non-conforming building. The Board felt this is a reasonable use of the land and that it is an improvement to the land. No other concerns were voiced and Practical Difficulties were reviewed.

On motion by Paul Krabbenhoft, and seconded by Greg Anderson, unanimously carried, the Board of Adjustment approved Dennis Wanzek's request for variance to allow a non-conforming structure to be removed and reconstructed only 90 feet from the center of a road on property located in the SW Quarter SW Quarter, Section 13, T137N R48W, Holy Cross Township for the following reasons:

- 1) That the property owner proposes to use the property in a reasonable manner not permitted by an official control;**
- 2) The plight of the landowner is due to circumstances unique to the property not created by the landowner;**
- 3) The variance will not alter the essential character of the locality.**

JEFFREY D. ANDERS - REQUEST FOR VARIANCE

The applicant is seeking approval of a variance to allow a second dwelling on a parcel that does not conform to County standards. The current requirements state that a second dwelling must be of a temporary nature (mobile home/modular, not on a permanent foundation). The property affected is 40 acres located in the S Half, SE Quarter, Section 5, T139N R45W (Hawley Twp.) in the Agricultural General (AG) zoning district.

On motion by Pamela Harper, seconded by Perry Bushaw, and unanimously carried, the Board opened the public hearing.

Tim Magnusson, Planning Director advised the Board that this Variance is after-the-fact. Last year Magnusson spoke with the applicant and discussed whether a second dwelling could be placed on his father's property. He was informed that the County does make allowances for a second dwelling, on a temporary basis, if the dwelling met the County's standards. No application was submitted for a permit. On July 29, 2016, the applicant was issued a permit to construct a 28-foot by 40-foot garage/office building on the site. Using that permit, the applicant has constructed a 28 foot by 30-foot garage/office structure with a second-floor apartment. The sewer is not connected to the building yet. Consequently, there are now two homes on the site. One home is intended for Mr. Anders and his wife and the main home is where Mr. Anders' father resides. Magnusson added that the second dwelling was built on a permanent foundation. Our ordinance states the second dwelling

is supposed to share the water supply with the main dwelling. Magnusson stated he had not assessed the property, rather he received the information from a sewer contractor. He clarified our ordinance requires separate septic systems.

Furthermore, the property could be split into two lots but they would only have one access. Magnusson showed another photo of the property, dwellings and surroundings. If the variance is granted, Magnusson feels we should not permit him to have a sewer system in the building. If he has water and sewer, it constitutes a residence. We regulate it by the application he used to apply for the building that was intended to be built, is not what was built. Utilizing that permit, the structure is in violation of that permit. It would not be considered a second dwelling unless it is hooked into a well and septic system or occupied.

He showed drawings of the floor plans that were provided by the applicant. He indicates a garage and an apartment.

Jeffrey Anders, the applicant, was present. He referenced the written scenario he provided to Tim, explaining the situation with his elderly father. He purchased the farm last year and has been cleaning up the property. Anders did not think it made sense to build a new home where the old house was because the old house is in disrepair, and needs a new roof and porch. Anders stated he had talked to Tim about situations of people moving onto a property to tend to their family. Anders and his wife lived in a camper last year for a few months. He stated the building is not finished. It needs doors, flooring, sheetrock, and plumbing and electrical. Anders admits that he should have asked for a variance earlier but he did not. He asked the Board to allow them to finish the building and live there to help his father live out the rest of his life.

The Board questioned why built he built on a permanent foundation as opposed to a manufactured home, why he didn't put money into the old home.

Magnusson recommends that if the variance is passed, that when the father passes, the house goes down. The applicant agreed and added he would not build another home on that site.

The applicant had talked to a couple septic companies and they advised him there must be a system for a two-bedroom structure minimum. If one of the septic systems was disconnected, there would only be one dwelling.

The Board asked about the minimum septic tank of 1000 gallons. The applicant stated that Larry Henry had put a new system in about 5 or 6 years ago. The original house has a block foundation with some cracks. The house could be remodeled but the applicant says it would need a new basement due to water and rodents.

The applicant was asked about creating a new parcel. The applicant said the property on the west side is wet and in RIM program. The appraisers he talked to said the RIM program complicated the appraisal process so they would not appraise it.

The applicant wants to downsize and keep things simple and inexpensive. He restated he does not care if the old house had to be torn down. The issue becomes relevant upon sale of the property.

The Board agreed that the only decision they could surmise, was to advise the applicant to split the lot. Magnusson checked the parcel and the split into two 1 1/2 acre lots is possible but an easement would be required. He advised the applicant of the process of splitting the parcel. The lots can always be combined in the future.

The applicant wishes to avoid the expense of a surveyor.

On motion by Paul Krabbenhoft, seconded by Greg Anderson, and unanimously carried, the Board closed the public hearing.

The Board reviewed the criteria for a practical difficulty.

They discussed denying the variance and advising the applicant to apply for a single lot subdivision process. Magnusson added that both the sewer systems need to be on the same parcel.

The Board understood the applicant's intention and position.

On motion by Paul Krabbenhoft, and seconded by Perry Bushaw, unanimously carried, the Board of Adjustment denied the variance, based upon the following criteria for a practical difficulty: #2. *the plight of the landowner is due to circumstances unique to the property not created by the landowner.* The Board did not feel they could approve the variance as they have no legal authority to do so.

OTHER BUSINESS:

BYLAWS & RULES OF PROCEDURE:

The Board of Adjustment Bylaws & Rules of Procedure were drafted. Upon final approval by Jenny Samarzja, the Board of Adjustment reviewed and discussed the proposed Bylaws & Rules of Procedure.

On motion by Greg Anderson, and seconded by Pam Harper, unanimously carried, the Board of Adjustment approved the Bylaws & Rules of Procedure as written.

On motion by Greg Anderson, and seconded by Perry Bushaw, and unanimously carried, the meeting was adjourned at 7:20 p.m.

By: _____
Amos Baer, Chair